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U.S. Department of Homeland Security
Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE
CIS, AAO, 20 Mass, 3/F
425 I Street, N.W.
Washington, DC 20536

FILE: EAC-02-076-50435 OFFICE: VERMONT SERVICE CENTER

DATE: JAN 09 2004

IN RE: Petitioner:
Beneficiary:

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

ON BEHALF OF PETITIONER:

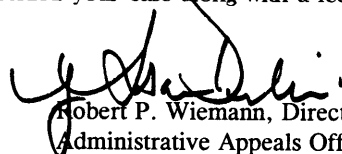
INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of Citizenship and Immigration Services (CIS) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.


Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Director of the California Service Center denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be denied.

The petitioner is an international trading company that employs five persons and has a gross annual income of \$502,480. It seeks to employ the beneficiary as a market researcher. The director denied the petition because the petitioner failed to establish that the position qualified as a specialty occupation.

On appeal, counsel submits a brief and additional evidence. Counsel states, in part, that the position qualifies as a specialty occupation.

Section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides for the classification of qualified nonimmigrant aliens who are coming temporarily to the United States to perform services in a specialty occupation.

The issue to be discussed in this proceeding is whether the position offered to the beneficiary qualifies as a specialty occupation.

Section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), defines the term "specialty occupation" as an occupation that requires:

- (A) theoretical and practical application of a body of highly specialized knowledge, and
- (B) attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States.

The term "specialty occupation" is further defined at 8 C.F.R. § 214.2(h)(4)(ii) as:

[A]n occupation which requires theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which requires the attainment of a bachelor's degree or higher in a specific specialty, or its equivalent, as a minimum for entry into the occupation in the United States.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(A), to qualify as a specialty occupation, the position must meet one of the following criteria:

(1) A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;

(2) The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree;

(3) The employer normally requires a degree or its equivalent for the position; or

(4) The nature of the specific duties is so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

The petitioner's letter, accompanying the I-129 petition, stated that the petitioning entity imports, exports, and sells raw and finished materials, metals, minerals, construction materials, hardware, luggage, and handbags. The letter delineated the beneficiary's duties as follows:

1. Researches market conditions in local, national[,] and international area[s] to determine potential sales of merchandise for exportation from and importation into, [sic] the United States, to and from all country [sic];
2. Establishes research methodology and designs [the] format for data gathering such as surveys, opinion polls, or questionnaires;
3. Examines and analyzes statistical data to forecast future marketing trends;
4. Gather[s] data on competitors and analyze[s] prices, sales[,] and methods of marketing and distribution;
5. Collects data on customer preferences and buying habits;
6. Prepares and graphic illustrations of findings[;]
7. Coordinate [sic] activities of distribution in the company with activities of sales, record control[,] and purchasing departments to ensure availability of products for customers.

The letter claimed that, given the complex duties of the position, candidates must possess, at minimum, bachelor's degrees in economics or related fields and/or management; and the letter averred that this is the normal requirement to enter into the occupation. The letter contended that candidates must possess the theoretical knowledge obtained through the attainment of a bachelor's degree to perform the duties of the position, and the letter claimed that useful courses for performing market research

and analysis, and interpreting data include advanced mathematics, international trade and finance, business correspondence, international business law, economics, principles of marketing, and import/export practices.

The letter stated that, according to the Foundation for International Service, the beneficiary has the equivalent of a bachelor's degree in international business from an accredited college or university in the United States. Moreover, the beneficiary has, the letter asserted, more than 12 years of experience in the international trade of textiles, and the letter delineated the beneficiary's employment history.

The petitioner also submitted a company profile; and the beneficiary's transcripts, educational evaluation, diploma, H-1B approval notice, and resume.

On February 19, 2002, the director requested additional evidence that would show: (1) the petitioner is a viable concern and has sufficient work at the H-1B level to employ the beneficiary; (2) the nature of the duties of the offered position require candidates to possess bachelor's degrees or higher; and (3) the petitioner actually intends to employ the beneficiary. Furthermore, the director requested a statement describing the beneficiary's project(s) during the next year, indicating the market research methodologies; the type, size, and location of the population/industry targets to be studied; the final presentation format of the research; and the recipient of the information. The director also requested a comprehensive business plan for the company, identifying how the beneficiary's projects will further the company's business objectives. Finally, the director requested evidence that would show that the position is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree; the director emphasized that highlighting excerpts from the Department of Labor's (DOL) *Occupational Outlook Handbook* (the *Handbook*) would be insufficient.

In response, counsel submitted a letter and a certification from the petitioner's president, attesting that counsel's statements in the letter are true to the best of the president's knowledge. Counsel's letter claimed that the petitioner requires a candidate with an educational background in business and professional experience to fill the position of market research analyst. Counsel described the major duties as:

[Conducting] research on market conditions in local, national[,] and international areas (including China, Hong Kong and Taiwan) to determine sales of the above[-] mentioned products and the after-sale services, to collect and analyze data on products and prices, [and] marketing channels and promotion methods, and to analyze

data on business reports, etc.

Counsel stated that, by using the market concept, which implies that the marketplace begins with the customer, the beneficiary would analyze the needs of the target market, and obtain information to produce products that fulfill the market's needs. The beneficiary's target market, counsel alleged, is China, and the greater metropolitan area, including New York and New Jersey. Counsel stated that the petitioner performs market research to: (1) identify marketing problems and opportunities; (2) analyze competitors' strategies; (3) evaluate and predict consumer behavior; (4) gauge the performance of existing products and package designs and assess the potential of new ones; and (5) develop price, promotion, and distribution plans.

Counsel stated that the beneficiary will use three main methodologies which are to obtain marketing research data, apply market research data, and use computer-based market research systems according to three market segmentations: geographic, demographic, and psychographics. The beneficiary's ability, counsel alleged, will benefit the company on a short-term and long-term basis. Counsel stated that without data about the market target, the petitioner would not have analysis of the market such as the comparison of prices and products. For instance, counsel alleged that the beneficiary would generate data from accounts, customers, inventory levels, and sales by territories, sales persons, customers, and products; and, in addition, the beneficiary would collect data from published reports, advertising agencies, and clients. The beneficiary will, counsel averred, enhance management's marketing strategy and business plan by displaying statistics in fields. The beneficiary will also, counsel asserted, set up a computer information system for management to more easily obtain data about inventory, orders, and deliveries, and track sales and test promotions and new product productions. The recipients of the reports, counsel related, would be the company's president and management, and the business plans and market materials would be distributed to potential customers, such as K-Mart, Wal-Mart, Sears, and Office Depot.

Counsel claimed that the petitioner's main clients are Wal-Mart, K-Mart, Office Depot, Office Max, Staples, and Syms. Many stores in the United States, counsel claimed, sell luggage. Thus, the beneficiary's three projects for the next year, counsel reported, are to perform: (1) market research and analysis on construction materials, and luggage in the metropolitan area and the East Coast; (2) analysis to determine the inventory level of luggage, comparing the quality, design, and selling trend of products made in China and the United States, and research construction materials, raw and finished materials, and metals based products made in the United States and China, and determine the best sales plan for the company; and (3) a comparison of the design of lady's handbags made in China to those made in the United States to retain the petitioner's current market share and to obtain new business.

Counsel stated, "[c]urrently the petitioner does not have the same position as [m]arketing [r]esearch [a]nalyst"; however, the petitioner's 2001 federal tax return indicates its ability to pay the beneficiary. Counsel reported that the petitioner substantiates its assertions with evidence: a business plan; a preliminary research report for luggage goods, prepared by the beneficiary; the company's federal tax return; and a bank statement.

The beneficiary's amplified duties, counsel related, include researching market conditions for selling merchandise in local, national, and international areas; designing a format for gathering data; examining and analyzing statistical data to forecast future marketing trends; gathering data about competitors, and analyzing prices, sales, and marketing methods; conducting market analysis to assist management's decision making about business development; investigating public relations, customer satisfaction, and trade relations with suppliers and customers; establishing operations procedures and strategies for marketing products; and coordinating distribution with sales, record control, and purchasing departments to ensure product availability.

Counsel maintained that candidates must possess knowledge of business management, information analysis, market research, import and export theory, finance, economics, international trade and finance, principles of marketing, accounting for foreign trade, and international trade experience. Hence, counsel claimed that candidates must possess theoretical and practical knowledge in international business or marketing, associated with the attainment of a bachelor's degree. Candidates must possess a bachelor's degree in international trade or marketing, counsel contended, to perform the duties of the proffered position; accordingly counsel avowed the position qualifies as a specialty occupation.

Counsel claimed that the beneficiary is qualified to perform the duties of the position in that he possesses a bachelor's degree in international trade. Counsel explained that, in July 1986, the beneficiary obtained a bachelor's degree in international trade from the University of International Business and Economics located in China. According to counsel, the Foundation for International Service found that the beneficiary has the equivalent of a bachelor's degree in international business from an accredited college or university in the United States. Moreover, the beneficiary has, the letter asserted, more than 12 years of experience in international trade and marketing research analysis.

On July 17, 2002, the director denied the petition, finding that the proffered position did not qualify as a specialty occupation. The director, citing *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988) and *Matter of Ramirez-Sanchez*, 17 I&N Dec. (BIA 1980), stated that counsel's response to the request for evidence, while

noteworthy, had little probative value, and the director stated that, according to *Matter of Laureano*, 19 I&N Dec. 13 (BIA 1983), the assertions of counsel do not constitute evidence.

The director further stated that, notwithstanding counsel's submission of the comprehensive business plan, the plan did not identify how the beneficiary's projects enhance the petitioner's short-term and long-term business objectives. The director also stated that the petitioner did not establish that the position is so specialized or complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree. The director related that the degree requirement must be industry-wide among similar firms and institutions, or the record must demonstrate that the beneficiary's duties are so unique that they can only be performed by person possessing abilities and education beyond the industry standard.

The director found that the record did not include evidence clearly establishing that the proffered position requires individuals to hold a bachelor's degree in a specialized area. Such evidence, the director stated, may have indicated comparative job postings, letters of support, or a position evaluation by a recognized professional. The director stated that, although the proposed duties appear to be the duties normally required of a market researcher, the director was not convinced that the beneficiary would be performing the specific duties because market researchers are most commonly employed by market research firms, consulting firms, financial services firms, and advertising firms. Because the petitioner is a small international trading company, specializing in finished material, metals, minerals, construction materials, hardware, luggage, and handbags, the director stated that it did not appear that the nature of the petitioner's business is such that it requires the services of a professional market researcher. It is not clear from the evidence in the record, the director stated, that the nature of the duties that the beneficiary would perform qualifies at the H-1B level or that the petitioner routinely requires a bachelor's degree in a specific field of study as a prerequisite for the proffered position.

On appeal, counsel states that he believes that the Service, now Citizenship and Immigration Services (CIS), unreasonably denied the petition, and that the petitioner established that the proffered position qualifies as a specialty occupation under the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A).

Counsel states that the beneficiary would play a major role in the company's business development and expansion of markets worldwide. Counsel alleges that in the import/export field, competitive prices and services and the quality of products will heavily affect a company's business. Employers, counsel claims, need to consider the cost of resources, including labor and materials, and the company's profit when making business strategies. Higher prices,

counsel contends, will decrease consumer demand, lowering prices may cause the loss of profits; therefore, reasonable prices should be made based on the comparative price and marketing demands. This, counsel claims, requires the beneficiary's services.

The company's business targets, counsel insists, depend on marketing trends and the market research analyst should collect and analyze the information, and the employer's business plan, sales advantage, sales targets, and competition will depend on future prices and consumer demand. The beneficiary's projects will provide the petitioner with both current and future marketing information about supply and demand, and the margin between the cost of resources and profit; thus, enhancing the petitioner's short and long-term business objectives.

Last, counsel explains that the petitioner had submitted a certification that attested to the declarations made by counsel in the letter of May 9, 2002.

The first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires that the petitioner establish that a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position. The petitioner stated in its letter accompanying the I-129 petition that, given the complex duties of the position, candidates must possess, at minimum, bachelor's degrees in economics or related fields and/or management; and the letter averred that this is the normal requirement to enter the occupation. The letter contended that candidates must possess the theoretical knowledge obtained through the attainment of a bachelor's degree to perform the duties of the position, and the letter claimed that useful courses for performing market research and analysis and interpreting data include advanced mathematics, international trade and finance, business correspondence, international business law, economics, principles of marketing, and import/export practices. Counsel, on appeal, states that candidates must have knowledge about finance, data analysis, management, international trade theory, and that financial and economic knowledge would be used to solve business problems, and statistical theory would be used to analyze data and forecast market trends. Moreover, counsel maintains that, according to the *H-1B Handbook*, 2002 edition, CIS considers a market research analyst position to be a specialty occupation and that the Department of Labor's *Occupational Outlook Handbook* states that candidates for market research analyst positions are required to possess bachelor's degrees.

The evidence contained in the record, and counsel's assertions on appeal, are insufficient to establish that the offered position qualifies as a specialty occupation. Citizenship and Immigration Service (CIS) looks beyond the title of the position and determines, from a review of the duties of the position and any supporting evidence, whether the position actually requires the

theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in a specific specialty as the minimum for entry into the occupation. The 2002-2003 edition of the *Handbook* is instructive in determining whether a position requires a baccalaureate or higher degree or its equivalent for entry into the occupation.

The *Handbook* reveals that the beneficiary's duties are encompassed by those performed by marketing and sales managers and buyers. For example, the beneficiary's primary duties are to research market conditions to evaluate sales of merchandise; collect and analyze data about products and prices, and marketing channels and promotion methods; analyze data on business reports; forecast marketing trends; and gather data about competitors and customer preferences. Marketing and sales managers perform these duties. The *Handbook* explains, on page 27, that marketing managers develop a firm's detailed marketing strategy. With the help of subordinates, marketing managers determine the demand for products and services offered by the firm and its competitors; in addition, they identify potential markets – for example, business firms, wholesalers, retailers, or the general public. The *Handbook* further states that marketing managers develop pricing strategy with an eye towards maximizing the firm's share of the market and its profits while ensuring that the firm's customers are satisfied. In collaboration with sales, product development, and other managers, the *Handbook* explains that marketing managers monitor trends that indicate the need for new products and services and oversee product development. The *Handbook* further relates that sales managers direct the firm's sales program. Sales managers analyze sales statistics gathered by their staffs to determine sales potential and inventory requirements and monitor the preferences of customers; such information is vital to develop products and maximize profits.

On pages 80-81, the *Handbook* reveals the following about buyers:

Purchasing managers, buyers, and purchasing agents seek to obtain the highest quality merchandise at the lowest possible purchase cost for their employers. In general, *purchasers* buy goods and services for their company or organization, whereas *buyers* typically buy items for resale. Purchasers and buyers determine which commodities or services are best, choose the suppliers of the product or service, negotiate the lowest price, and award contracts that ensure that the correct amount of the product or service is received at the appropriate time. In order to accomplish these tasks successfully, purchasing managers, buyers, and purchasing agents study sales records and inventory levels of current stock, identify foreign and domestic suppliers, and keep abreast of changes affecting both

the supply of and demand for needed products and materials.

[Buyers] and purchasing agents evaluate suppliers based upon price, quality, service support, availability, reliability, and selection. To assist them in their search, they review catalogs, industry and company publications, directories, and trade journals. Much of this information is now available on the Internet. They research the reputation and history of the suppliers and may advertise anticipated purchase actions in order to solicit bids. . . . Once all the necessary information on suppliers is gathered, orders are placed and contracts are awarded to those suppliers who meet the purchasers' needs. Contracts often are for several years and may stipulate the price or a narrow range of prices, allowing purchasers to reorder as necessary

Purchasing agents and buyers commonly focus on routine purchasing tasks, often specializing in a commodity or group of related commodities, such as steel, lumber, cotton, grains, fabricated metal products, or petroleum products.

Other purchasing specialists, who buy finished goods for resale, are employed by wholesale and retail establishments where they commonly are known as buyers or merchandise managers. Wholesale and retail buyers are an integral part of a complex system of distribution and merchandising that caters to the vast array of consumer needs and desires. Wholesale buyers purchase goods directly from manufacturers or from other wholesale firms for resale to retail firms, commercial establishments, institutions, and other organizations. . . . Buyers largely determine which products their establishment will sell. Therefore, it is essential that they have the ability to accurately predict what will appeal to consumers. They must constantly stay informed of the latest trends because failure to do so could jeopardize profits and the reputation of their company. Buyers also follow ads in newspapers and other media to check competitors' sales activities and watch general economic conditions to anticipate consumer buying patterns. Buyers working for large and medium-sized firms usually specialize in acquiring one or two lines of merchandise, whereas buyers working for small stores may purchase their complete inventory.

On page 28, the *Handbook* states the following with regard to training, advancement and other qualifications for marketing and sales manager positions:

A wide range of educational backgrounds are suitable for entry into advertising, marketing, promotions, public relations, and sales managerial jobs, but many employers prefer those with experience in related occupations plus a broad liberal arts background. A bachelor's degree in sociology, psychology, literature, journalism, or philosophy, among other subjects, is acceptable. However, requirements vary, depending upon the particular job.

On appeal, counsel maintains that the duties of the position require candidates to possess knowledge about finance, data analysis, management, and international trade theory, have financial and economic knowledge to solve business problems, and know statistical theory to analyze data and forecast market trends. Similar to the petitioner's course requirements, the *Handbook* reveals that some employers seeking candidates for marketing, sales, and promotions manager positions find these courses are advantageous. Specifically, for marketing, sales, and promotion manager positions the *Handbook* provides:

[S]ome employers prefer a bachelor's or master's degree in business administration with an emphasis in marketing. Courses in business law, economics, accounting, finance, mathematics, and statistics are advantageous.

The *Handbook* reports that employers find a wide range of educational backgrounds suitable for entry into the proffered position. Under the *Handbook*, for example, an employer may find that a person with experience in a related occupation and an associate or bachelor's degree in any field of study suitable for a sales manager position. Although some employers prefer a bachelor's or master's degree in business administration, most do not normally require a bachelor's degree in a specialized field. Thus, according to the *Handbook*, the offered position would not qualify as a specialty occupation because employers do not require a bachelor's degree in a specific specialty.

With respect to the training, advancement and other qualifications for buyers, the *Handbook* states the following on page 82:

Qualified persons may begin as trainees, purchasing clerks, expeditors, junior buyers, or assistant buyers. Retail and wholesale firms prefer to hire applicants who have a college degree, and are familiar with the merchandise they sell and with wholesaling and retailing practices. Some retail firms promote

qualified employees to assistant buyer positions; others recruit and train college graduates as assistant buyers. Most employers use a combination of methods.

Educational requirements tend to vary with the size of the organization. Large stores and distributors, especially those in wholesale and retail trade, prefer applicants who have completed a bachelor's degree program with a business emphasis. Many manufacturing firms put a greater emphasis on formal training. They prefer applicants with a bachelor's or master's degree in engineering, business, economics, or one of the applied sciences.

According to the *Handbook*, large stores and distributors, especially those in wholesale and retail trade, prefer candidates possessing a degree with a business emphasis; however, the *Handbook* reveals that most employers do not have this preference. Thus, the petitioner does not establish the first criterion: that a degree in a specific specialty is the normal minimum for entry into the particular position.

Next, the second criterion requires that the petitioner show that the degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, show that its particular position is so complex or unique that it can be performed only by an individual with a degree. Factors often considered by CIS when determining the industry standard include: whether the *Handbook* reports that the industry requires a degree; whether the industry's professional association has made a degree a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest that such firms "routinely employ and recruit only degreed individuals." *Shanti, Inc. v. Reno*, 36 F. Supp. 2d 1151, 1165 (D.Min. 1999) (quoting *Hird/Blaker Corp. v. Slattery*, 764 F. Supp. 872, 1102 (S.D.N.Y. 1991)).

On appeal, counsel submits ten advertisements from the *New York Times* and *Star-Ledger* that counsel alleges are comparative to the petitioner's position. Counsel maintains that the advertisements for market research analysts show that employers require candidates to hold bachelor's degrees, or an equivalent, in business administration, finance, economics, marketing, or international trade. This is a common requirement, counsel contends, for market research analyst positions in the industry - regardless of a company's size.

A close examination of the advertisements discloses that each position requires a bachelor's degree or equivalent in economics/marketing, business administration, business, or a closely related discipline. Nevertheless, the companies seeking candidates may differ in nature from the petitioner's company, and

the advertisements do not reveal whether the duties of the advertised positions parallel the proffered position's duties.

Because many of the advertisements seek candidates to negotiate contracts, a duty performed by buyers not by market research analysts, it is impossible to determine whether the duties of the offered position parallel those of the advertised positions. The advertisement from SINOPEC USA, Inc. seeks a market research analyst to import/export oil/petroleum products; however, the advertised position requires candidates to negotiate contracts, and SINOPEC doesn't indicate the percentage of time devoted to this duty. G&G Industrial Corp.'s advertisement seeks a market research analyst to import/export cleaning tools and machine parts. Again, G&G Industrial requires candidates to negotiate contracts, but the advertisement doesn't state the percentage of time devoted to this duty. SweetHome Products, Inc.'s advertisement seeks candidates for a market research analyst position to research market conditions for household products in the United States and China. One duty is to negotiate contracts; once again, the advertisement does not indicate the percentage of time devoted to this duty. Thus, it is impossible to determine whether the duties of the offered position parallel those of SweetHome's duties.

It is clear that the petitioner differs in nature from some of the companies in the advertisements. For example, the petitioner differs in nature from Knowledge Networks, a marketing intelligence company, and the Knowledge Networks' advertised duties reflect this dissimilarity. An advertisement from a company in the garment industry requires candidates to prepare financial and business reports, and advise management about financing, marketing, business, and accounting systems. The petitioner is different in nature from the garment company, and the duties of the garment company's position are broad, and do not focus on the marketplace like the beneficiary's duties. The advertisement from NY Supermarket seeks candidates to perform market analyst duties for foodstuff marketing. Once again, the employer requires candidates to negotiate contracts and the advertisement does not indicate the percentage of time candidates would spend negotiating contracts. In addition, the petitioner is not a supermarket; thus, the organizations differ in nature. Another advertisement from a retail food corporation seeks a market researcher/analyst; however, the advertisement does not state the job duties. Moreover, the petitioner differs in nature from a retail food corporation. A.M. Geller International's advertisement seeks a market research analyst; nevertheless, the advertisement is silent regarding job duties and the nature of the advertiser. Another advertisement seeks a market research analyst for mortgage products or services. Plainly, the petitioner differs in nature from the advertiser - the petitioner doesn't sell mortgage products or services. The travel company's advertisement seeks a market research analyst to determine sales of the travel products. Again, the petitioner differs in nature from a travel company.

The advertisement from Farenco Development Co., Ltd., an international trade company, seeks candidates for a market analyst position. This company is the closest in nature to the petitioner. However, Farenco Development requires candidates to negotiate contracts, and again, the advertisement does not indicate the percentage of time candidates would spend negotiating contracts.

Accordingly, the petitioner does not prevail on establishing the second criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

The petitioner also does not provide evidence that would evince that its particular position is so complex or unique that it can be performed only by an individual with a degree.

Counsel asserts that the petitioner satisfied the third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) in that the petitioner normally requires a degree or its equivalent for the proffered position. Counsel explains that the Vermont Service Center had approved a similar petition in the past; thus, it has already determined that the proffered position is a specialty occupation. Furthermore, counsel states that all five of the petitioner's employees perform different duties and responsibilities and each employee is required to hold, at minimum, a bachelor's degree. This record of proceeding does not, however, contain all of the supporting evidence submitted to the Vermont Service Center in the prior case. In the absence of all of the corroborating evidence contained in that prior proceeding, the documents submitted by counsel are not sufficient to enable the AAO to determine whether the position involved in the prior petition is parallel to the proffered position. Moreover, each nonimmigrant petition is a separate proceeding with a separate record. See 8 C.F.R. § 103.8(d). In making a determination of statutory eligibility, CIS is limited to the information contained in the record of proceeding. See 8 C.F.R. § 103.2(b)(16)(ii).

Furthermore, the petitioner's creation of a position with a perfunctory bachelor's degree requirement will not mask the fact that the position is not a specialty occupation. CIS must examine the ultimate employment of the alien, and determine whether the position qualifies as a specialty occupation. *Cf. Defensor v. Meissner*, 201 F. 3d 384 (5th Cir. 2000). The critical element is not the title of the position or an employer's self-imposed standards, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation as required by the Act.¹ To interpret the

¹ The court in *Defensor v. Meissner* observed that the four criteria at 8 C.F.R. 214.2(h)(4)(iii)(A) present certain ambiguities when compared to the statutory definition, and "might also be read as merely an additional requirement that a position

regulations any other way would lead to absurd results: if CIS were limited to reviewing a petitioner's self-imposed employment requirements, then any alien with a bachelor's degree could be brought into the United States to perform a menial, non-professional, or an otherwise non-specialty occupation, so long as the employer required all such employees to have baccalaureate or higher degrees. See *id.* at 388.

According to the *Handbook*, the duties of the proffered position correspond to those of marketing and sales managers; consequently, the offered position would not qualify as a specialty occupation because employers do not require candidates for marketing and sales manager positions to possess a bachelor's degree in a specific specialty.

The fourth and final criterion requires that the petitioner establish that the nature of the specific duties is so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree. The petitioner's letter accompanying the I-129 petition contended that candidates must possess the theoretical knowledge obtained through the attainment of a bachelor's degree to perform the duties of the position, and the letter claimed that useful courses for performing market research and analysis, and interpreting data include advanced mathematics, international trade and finance, business correspondence, international business law, economics, principles of marketing, and import/export practices. And, on appeal, counsel, recounting the duties of the proffered position, states that candidates must have knowledge about finance, data analysis, management, and international trade theory, which is associated with the attainment of a bachelor's degree. As previously discussed, the *Handbook* reports that some employers seeking candidates for marketing, sales, and promotions manager positions find these courses are advantageous. Thus, the duties and the corresponding academic training suited to the proffered position and marketing and sales manager positions are comparable.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed. The petition is denied.

must meet, in addition to the statutory and regulatory definition." See *id.* at 387.